

REMARKS

Claims 14-23 and 25-32 are currently pending in the subject application and are presently under consideration. Applicants' representative respectfully notes that the Examiner has failed to address the arguments and comments conveyed in the last Response (Reply to Final Office Action filed on July 30, 2007), which have been entered in view of applicants' submission filed on August 27, 2007, and are presented again below. Accordingly, applicants' representative respectfully requests that a new, subsequent Office Action be issued as a non-final action.

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

I. Rejection of Claims 14, 15 and 25-28 Under 35 U.S.C. §102(b)

Claims 14, 15 and 25-28 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Scheibel *et al.* (US 6,212,240). Applicants' representative respectfully disagrees and submits that this rejection should be withdrawn for at least the following reason. Scheibel *et al.* does not teach or suggest each and every element of the subject claims.

For a prior art reference to anticipate, 35 U.S.C. §102 requires that “*each and every element* as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950 (Fed. Cir. 1999) (quoting *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)) (emphasis added).

Claims 14-15.—Applicants' claimed subject matter relates to a method for wireless communication between a first station and second station in a wireless network, wherein data is transmitted asymmetrically; namely, communication in one direction uses a protocol and communication in the other direction uses a different protocol (paragraph [0008]). In particular, independent claim 14 (from which claim 15 depends) recites *at the first station, transmitting acknowledgement packets to the second station in response to data packets received from the second station, using a first acknowledgement modulation and a first acknowledgement rate, wherein the first acknowledgement modulation and the first acknowledgement rate are predetermined using one or more attributes of the first station and the second station and at the second station, transmitting acknowledgement packets to the first station in response to the*

data packets received from the first station, using a second acknowledgement modulation and a second acknowledgement rate, wherein the second acknowledgement modulation and the second acknowledgement rate are predetermined using one or more attributes of the first station and the second station. Scheibel *et al* fails to disclose such claimed features.

Scheibel *et al.* discloses a method and apparatus for conveying data between communication devices. A first communication device transmits user data blocks to a second communication device at a first communication rate. The first communication device receives an acknowledgment from the second communication device indicating the quantity of data blocks that were received. The first communication device then retransmits the data blocks that were not received at a second data rate in case the number of data blocks that failed to be transmitted is smaller than a threshold, otherwise retransmission proceeds at the first rate. The cited document fails to teach or suggest the first communication device transmitting *acknowledgement packets* to the second communication device *using a first acknowledgement modulation and a first acknowledgement rate predetermined using one or more attributes of the first station and the second station*, and the second communication device *transmitting acknowledgement packets* to the first communication device *using a second acknowledgement modulation and a second acknowledgement rate predetermined using one or more attributes of the first station and the second station*. Rather, in Scheibel *et al.* the second communication device transmits acknowledgments to the first device at a low rate (QPSK, Fig.2 and col. 4, lines 23-28; Scheibel *et al.*), whereas the first communication device does not transmit acknowledgement messages to the second communication device. It should be appreciated that Scheibel *et al.* discloses that the “acknowledgment message is preferably transmitted at the lowest modulation rate (e.g. using QPSK modulation) to maximize the likelihood of successful transfer” (col. 4, lines 26-28; Scheibel *et al.*), instead of determining the acknowledgement rate *using one or more attributes of the first station and the second station*. Therefore, Scheibel *et al.* fails to teach or suggest each and every element of the claimed subject matter. Accordingly, applicants’ representative respectfully requests this rejection be withdrawn.

Claims 25-28.—Independent claim 25 (from which claims 26-28 depend) recites *transmitting a first data packet to a second station using a first wireless communication protocol, the first wireless communication protocol is predetermined using one or more attributes of the second station; and receiving a second data packet from the second station, the*

second data packet transmitted using a second wireless communications protocol, and the second wireless communication protocol is predetermined using one or more attributes of the first station. Scheibel *et al.* fails to teach or suggest these claimed features. The cited reference is silent regarding determining wireless communication protocols *using one or more attributes of the second station* or the *first station*. Rather, in Scheibel *et al.* the first communication protocol is determined based on bandwidth utilization, a property of the wireless communication channel instead of *attributes of the second station* (col. 3, lines 42-55; Scheibel *et al.*). In addition, the second communications protocol is determined as to “maximize the likelihood of successful transfer” (col. 4, line 28; Scheibel *et al.*), instead of *using one or more attributes of the first station*. Therefore, Scheibel *et al.* fails to teach or suggest each and every element of the subject claims. Accordingly, this rejection should be withdrawn.

In view of at least the foregoing, and that the standard by which anticipation is to be measured is *strict identity* between the cited document and the subject matter as claimed, not mere equivalence or similarity (see Richardson at 9 USPQ2d 1913, 1920), applicants’ representative respectfully submits that Scheibel *et al.* fails to anticipate independent claims 14 and 25, and claims dependent thereupon. Accordingly, applicants’ representative respectfully requests withdrawal of this rejection and allowance of the subject claims.

II. Rejection of Claims 16-23 Under 35 U.S.C. §103(a)

Claims 16-23 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Scheibel *et al.* (US 6,212,240) in view of Keaney *et al.* (US 7,062,703). Applicants’ representative respectfully submits that the cited references fail to make obvious applicants’ claimed subject matter for at least the following reasons.

“If the claim preamble, when read in the context of the entire claim, recites limitations of the claim, or, if the claim preamble is ‘necessary to give life, meaning, and vitality’ to the claim, then the claim preamble should be construed as if in the balance of the claim.” *Pitney Bowes Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305, 51 USPQ2d 1161, 1165 (Fed. Cir. 1999) (quoting *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 480-81 (CCPA 1951).

Claims 16-17.—Claims 16 and 17 depend from independent claim 14. As discussed above, Scheibel *et al.* fails to teach or suggest each and every limitation of the subject independent

claim. Keaney *et al* fails to remedy the aforementioned deficiencies of the primary reference. Keaney *et al.* discloses an apparatus, a carrier medium storing instructions to implement a method, and a method to receive packets that exactly or substantially conform to a wireless standard according to which each packet includes a header having bits that have respective correct values in the case that the packet exactly conforms to the standard (Abstract; Keaney *et al.*). The cited reference is silent regarding communication between a first station and a second station wherein *at the first station, transmitting acknowledgement packets to the second station in response to data packets received from the second station, using a first acknowledgement modulation and a first acknowledgement rate, wherein the first acknowledgement modulation and the first acknowledgement rate are predetermined using one or more attributes of the first station and the second station and at the second station, transmitting acknowledgement packets to the first station in response to the data packets received from the first station, using a second acknowledgement modulation and a second acknowledgement rate, wherein the second acknowledgement modulation and the second acknowledgement rate are predetermined using one or more attributes of the first station and the second station*, as claimed in independent claim 14. Therefore, the combination of Scheibel *et al.* and Keaney *et al.*, fails to make obvious applicants' claimed subject matter. Accordingly, applicants' representative submits that this rejection should be withdrawn.

Claims 18-23.—Independent claim 18 (from which claims 19-23 depend) recites: *A method of wireless communication between a first station and a second station, the first station comprising a more sensitive receiver and the second station comprising a less sensitive receiver.* Scheibel *et al.* and Keaney *et al.*, alone or in combination, fail to teach or suggest such claimed features. It should be appreciated that the preamble of independent claim 18 is limiting, as it confers meaning to the subject claim by relating the limitation of *transmitting data packets at 802.11b rates* with the station that possess the less sensitive receiver, and the limitation of *transmitting data packets at OFDM rates*, which require higher signal-to-noise ration (SNR), with station that posses the more sensitive receiver. Therefore, Scheibel *et al.* and Keaney *et al.*, alone or in combination, fail to teach each and every limitation of independent claim 18, as claims dependent thereupon. Accordingly, this rejection should be withdrawn.

In view of at least the foregoing, applicants' representative respectfully submits that the primary reference and the secondary reference, alone or in combination, fail to make obvious claims 16-22, and requests this rejection to be withdrawn.

III. Rejection of Claims 29-32 Under 35 U.S.C. §103(a)

Claims 29-32 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Scheibel *et al.* (US 6,212,240). Applicants' representative respectfully submits that Scheibel *et al.* fails to make the claimed subject matter obvious for at least the following reasons. Claims 29-32 depend from independent claim 25. As discussed above, Scheibel *et al.* fails to teach or suggest each and every aspect such independent claim 25. Therefore, applicants' representative respectfully requests this rejection to be withdrawn and claims 29-32 be allowed.

CONCLUSION

The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 [QUALP693USA].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicants' undersigned representative at the telephone number below.

Respectfully submitted,

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